THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.21988 of 1995

Dt. 24-03-2006

Between:

B.Neelavathamma

..Petitioner

and

1.A.P. Housing board, Hyderabad rep. By
Regional Housing Engineer, Nellore and others.

..Respondents

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ORAL ORDER:

Petitioner invoked Certiorari jurisdiction of this Court for calling the records in HPA/91 dated 20-08-1995 on file of the 3rd respondent confirming the order passed by the 2nd respondent—Competent Authority under the A.P. Housing Board Act, ordering eviction of the petitioner.

The facts which are not in dispute and relevant for disposal of the writ petition are as under:

A.P. Housing Board acquired Ac.4.73 cts. of land in Sy.No.957/1 at Ongole for construction of houses in the year 1971 and accordingly constructed 13 Middle Income Group Houses and 20 Lower Income Group Houses leaving some land for future use. On completion of construction the houses were allotted. While so, petitioner encroached the Housing Board land to an extent of 313 sq. yards leftover for future development wherein thatched house was constructed in the year 1977. Therefore, notice was issued on 30-05-1983 for removing the unauthorized construction before 14-06-1983. On petitioner failed to remove the unauthorized construction, the Regional Housing Engineer, A.P. Housing Board filed a petition before the Competent Authority seeking for eviction and also for recovery of encroachment fees with penalty, damages etc. Petitioner

contested the matter that she occupied the land adjacent to the housing colony and the ownership does not rest with the Housing Board and prior to her occupation the site was full of ditches and she filled up the ditches and constructed a thatched house. Even otherwise the purpose of the Board is to provide house sites, she being the occupant of 313 sq. yards entitled to regularization of her occupation, which was done by the Housing Board in favour of Jekraiah. The site where she put up a thatched house belongs to Revenue Department and not Housing Board and claiming Rs.16,088.70 Ps.towards damages cannot be sustainable. On Competent Authority ordering eviction she filed an appeal before the District Court. The District Judge after taking into all admissions made by the petitioner in the cross-examination that at the time she occupied the land she had knowledge that the land occupied by her belongs to the Housing Board held that it is not open for her to contend that property does not belong to Housing Board and belongs to Revenue Department and in the evidence she disclosed after construction of the houses the Housing Board kept a portion of land acquired for future use as per Ex.A1—lay out plan, Housing board acquired the land in the year 1971 and the site encroached by the petitioner has been shown in red ink. When the petitioner could not have right to occupy the sad land and she is in unauthorized occupation of the Housing Board land, she cannot be continued in possession and ordered for eviction. The amount ordered by the competent authority to pay Rs.19,275.50 ps. towards loss of rent is not sustainable and set aside the damages so awarded.

Though several grounds have been raised including the lower Court is not justified in holding that the petitioner is not in

rightful possession of the property as per the orders given by the revenue authorities, the only submission made by the learned counsel for the petitioner is that when the Housing Board regularized Ac.0.5 cts. of land in favour of Jekraiah, petitioner's possession can also be regularized on payment of market value. Therefore, lower court ought not to have ordered for eviction.

When the Housing Board acquired the land for integrated development of constructing houses to the colony, certain area has to be set apart as open space for the benefit of the local people. Only the stray lands which are adjacent to the existing houses and which cannot be put to any use are permitted to be sold in open auction to the neighbours of the houses or can be allotted if the area is less than 100 sq. yards. But such allotment and sale do not authorize the Housing Board to violate Building Regulations, which are applicable, and the mandatory requirements i.e. leaving sufficient open land in the residential locality. If the land is set apart for open area, every occupier of the house will have a right over the said land which is set apart for beneficial enjoyment of the residents where the Housing Board Project has been implemented. In spite of leaving sufficient open place as per the lay out and building bye laws still there is any land remains, if the Housing Board wants to dispose of the same, it can be done only by way of open auction.

In view of the same, petitioner being an encroacher who encroached the land and denied the title of the Housing Board after suffering an order of eviction cannot plead that her possession can be regularized by fixing the market value. If the Court directs to regularize such unauthorized occupation it is rather difficult to safeguard the property owned and possessed by the State or its

instrumentalities.

Since the order impugned do not suffer from any manifest illegality warranting interference in exercise of Certiorari jurisdiction this Court cannot substitute the order passed by the Competent Authority as confirmed by the Appellate Authority with that of regularizing the unauthorized occupation.

Writ petition is accordingly dismissed. The Housing Board is entitled to recover the possession of the property. If for any reason it wants to dispose of the same, it can be done only by way of public auction not by any other mode. No costs.

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A.GOPAL REDDY,J

24-03-2006

Murthy